

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LARRY TOTTEN, JOSE MORENO, in their)	No. C-05-4307-SC
capacities as Trustees of the)	
LABORERS HEALTH AND WELFARE TRUST)	
FUND FOR NORTHERN CALIFORNIA;)	
LABORERS VACATION-HOLIDAY TRUST)	ORDER REGARDING
FUND FOR NORTHERN CALIFORNIA;)	ATTORNEYS' FEES AND
LABORERS PENSION TRUST FUND FOR)	<u>COSTS</u>
NORTHERN CALIFORNIA; and LABORERS)	
TRAINING AND RETRAINING TRUST FUND)	
FOR NORTHERN CALIFORNIA,)	
)	
Plaintiffs,)	
)	
v.)	
)	
ALEX PEGUES, individually; ROGER)	
PITCHER, individually; ALEX PEGUES)	
and ROGER PITCHER, individually and)	
dba C&C MAINTENANCE SERVICE and C&C)	
MAINTENANCE SERVICE,)	
)	
Defendants.)	

I. INTRODUCTION

Plaintiffs Larry Totten et al. ("Plaintiffs") filed this action against Defendants Alex Pegues, both individually and dba C&C Maintenance Service ("Defendants")¹, alleging causes of action for violations of the Employee Retirement Security Act, 29 U.S.C. § 1001 et seq. ("ERISA").

In its Order granting Plaintiffs' Motion for Summary Judgment

¹ Plaintiffs dismissed Roger Pitcher as a defendant. See Docket Nos. 15 and 16.

1 ("Summary Judgment Order"), the Court awarded Plaintiffs
2 attorneys' fees and costs, subject to the Court's approval of
3 Plaintiffs' offer of proof. See Docket No. 48. Having reviewed
4 Plaintiffs' declaration, see Docket No. 51, the Court AWARDS
5 Plaintiffs attorneys' fees of \$29,159.94 and costs of \$1,800.81.

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7 **II. BACKGROUND**

8 Plaintiffs sued Defendants Alex Pegues and C&C Maintenance
9 Service to recover delinquent contributions to several Laborers
10 Trust Funds. See First Amended Complaint, Docket No. 4. The
11 relevant facts of the case have been described in previous orders,
12 familiarity with which is presumed. For purposes of the instant
13 order, the Court need only determine whether Plaintiffs' requested
14 fees and costs are reasonable.

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16 **III. DISCUSSION**

17 In the Summary Judgment Order, the Court found that
18 Defendants were bound by the Collective Bargaining Agreement
19 covering the Laborers Trust Funds for Northern California listed
20 in the case caption. Plaintiffs seek attorneys' fees and costs
21 based on provisions of the Trust Agreements and ERISA. The Trust
22 Agreements provide:

23 If any individual employer defaults in the making of such
24 contributions or payments and if the Board consults or causes
25 to be consulted legal counsel with respect thereto, there
26 shall be added to the obligation of the individual employer
27 who is in default, reasonable attorneys fees, court costs and
28 all other reasonable expenses incurred in connection with
such suit or claim, including any and all appellate
proceedings therein.

1 Hagan Decl., Ex. C, 11. Furthermore, Section 502(g)(2) of ERISA
2 mandates the award of attorneys fees:

3 In an action under this subchapter by a fiduciary for or on
4 behalf of a plan to enforce section 1145 of this title in
5 which a judgment in favor of the plan is awarded, the court
shall award the plan-- . . . (D) reasonable attorney's fees
and costs of the action, to be paid by the defendant

6 29 U.S.C. § 1132(g)(2). In this case, the Trust Funds are a
7 fiduciary under ERISA and they are entitled to an award if the
8 following requirements are met: "1) the employer must be
9 delinquent at the time the action is filed; (2) the district court
10 must enter a judgment against the employer; and (3) the plan must
11 provide for such an award." Northwest Admin., Inc. v. Albertson's
12 Inc., 104 F.3d 253, 257 (9th Cir. 1996). As discussed in the
13 Summary Judgment Order, Defendant is delinquent in contributions,
14 the Court entered judgment against Defendant, and the plan
15 provided for such an award. See Docket No. 48, 49; Hagan Decl.,
16 Ex. C, 11.

17 The Court has reviewed the Lozano-Batista Declaration, Docket
18 No. 51. The attorneys' fees incurred by Plaintiffs were
19 reasonably and necessarily incurred in pursuit of their case
20 against Defendants for failure to contribute to the various
21 pension plans. The attorneys' hourly rate of \$225 was reasonable
22 in light of the attorneys' skill and experience. In addition,
23 other Courts in this District have found \$225 to be a reasonable
24 hourly rate for attorneys who litigate ERISA cases in the Bay
25 Area. See Board of Trustees of the Laborers Health and Welfare
26 Trust Fund for Northern California, et al. v. Atoll Topui Island,
27 Inc., 2007 WL 174409 (N.D. Cal. Jan. 22, 2007). Thus, Plaintiffs

1 are entitled to attorneys' fees in the amount of \$29,159.94.

2 Plaintiffs also requested reimbursement for costs of
3 \$1,800.81, consisting primarily of service of documents for the
4 case. These items are allowable under Civil Local Rule 54-3 and
5 the Court finds them to be reasonable. Thus, Plaintiffs are
6 entitled to costs in the amount of \$1,800.81.

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8 **V. CONCLUSION**

9 For the reasons stated herein, the Court AWARDS Plaintiffs
10 attorneys' fees of \$29,159.94 and costs of \$1,800.81.

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12 IT IS SO ORDERED.

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14 Dated: April 17, 2007



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UNITED STATES DISTRICT JUDGE